UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

REGIONAL
ADMINISTRATOR'S
DIVISION

April 5, 2021

Michelle McMullin
NOAA Fisheries Oregon Coast Branch
2900 Stewart Parkway NW
Roseburg, Oregon 97471

Dear Michelle McMullin:

The U.S. Environmental Protection Agency has reviewed the National Marine Fisheries Service's Notice of Intent to prepare an Environmental Impact Statement for the Western Oregon State Forests Habitat Conservation Plan and in support of Oregon Department of Forestry's request for Endangered Species Act Incidental Take Permit issuance (EPA Region 10 Project Number 21-0011-NMFS). EPA's comments are provided pursuant to our responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act.

According to the NOI, the NMFS proposes to evaluate the potential environmental impacts associated with an authorization for incidental take of federally protected species during the HCP activities. The HCP activities include stand management, road system management, recreation infrastructure construction and maintenance, and conservation actions. The proposed HCP will support the anticipated ITP issuance. After analysis of potential impacts from the proposed action, the NMFS will process ODF's request for an ITP, then decide whether to grant, grant with conditions, or deny the ITP.

EPA appreciates the information provided in the NOI. EPA offers the NMFS the enclosed scoping comments on specific topics we believe are important to consider in the NEPA analysis for this project.

Thank you for the opportunity to comment of this project proposal early in the NEPA process. If you would like to discuss these comments, please contact Caitlin Roesler of my staff at 206-553-6518 or roesler.caitlin@epa.gov, or me at 206-553-1774 or chu.rebecca@epa.gov.

Sincerely,

REBECCA CHU

Digitally signed by REBECCA CHU
Date: 2021.04.05 10:00:55 -07'00'

Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

U.S. EPA Detailed Comments on the Notice of Intent for the Western Oregon State Forests Habitat Conservation Plan April 2021

Water Quality and Aquatic Resource Impacts

Section 303(d) of the Clean Water Act requires the State of Oregon and Tribes with EPA-approved Water Quality Standards identify water bodies that do not meet WQS. This section of the Clean Water Act also requires the development of water quality restoration plans to meet established water quality criteria and associated beneficial uses. Activities authorized under the proposed HCP may impact aquatic resources in the planning area. EPA recommends that the EIS include the following information:

- Acreages and channel lengths, habitat types, values, and function of waters likely to be impacted. The nature of the impacts and specific pollutants likely to affect those waters should be described.
- Water bodies potentially affected by the project that are listed on the State of Oregon most current EPA-approved 303(d) list and a description of how the project would meet the antidegradation provisions of the CWA. The antidegradation provision of the CWA prohibits degrading water quality within water bodies that are currently meeting WQS.
- Existing restoration and enhancement efforts for potentially impacted waters, how the proposed project would coordinate with on-going protection efforts, and any mitigation measures, including compensatory mitigation required under the CWA, to reduce impacts to surface waters of the U.S.
- Whether the project would result in discharge of dredged or fill materials into surface waters of the United States. If so, a CWA §404 permit from the U.S. Army Corps of Engineers would be required for the project. The EIS would need to describe this permit application process and recommended measures to protect aquatic resources from impacts resulting from the proposed project.
- Floodplain impacts and actions to be taken to minimize related impacts. See CWA §404 and Executive Order 11988, *Floodplain Management.*[1]

Riparian Buffers

The HCP set a 35-foot buffer on Type N streams to limit temperature increases to 1°C, an increase which is proposed to be mitigated in the 500-foot Temperature Protection Zone (TPZ) between Type N and Type F waters. Recovery of stream temperature in the TPZ is dependent on the amount of expected heat dissipation and groundwater recharge within the TPZ. Attenuation of added heat energy from upstream harvest reaches on similar headwater streams was reported in the publication "Effectiveness of Experimental Riparian Buffers on Perennial Non-fish-bearing Streams on Competent Lithologies in Western Washington."[2] This data supports the HCP finding that recovery of a 1°C stream temperature is likely to occur in the TPZ. However, results from the 2018 "Ripstream" study[3] conducted by the Oregon Department of Forestry suggest a 35-foot buffer width would result in an average temperature increase of 1.65°C, which may not be fully attenuated in the TPZ. EPA recommends that the NMFS consider wider Type N riparian buffers to account for greater than expected stream temperature increases.

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[1] https://www.epa.gov/cwa-404/floodplain-management-executive-order-11988

[2] https://www.dnr.wa.gov/publications/fp_cmer_hard_rock_phase1_2018.pdf

[3] Groom, J. D., Madsen, L. J., Jones, J. E., & Giovanini, J. N. (2018). Informing changes to riparian forestry rules with a Bayesian hierarchical model. Forest Ecology and Management, 419, 17-30.

Sedimentation
Roads can contribute more sediment to streams than any other management activity and interrupt the subsurface flow of water, particularly where roads cut into steep slopes. In addition, roads have been shown to produce elevated volumes of chronic surface sediment runoff from the road surface. Roads and their use contribute to habitat fragmentation, wildlife disturbance, and the introduction or exacerbation of noxious weeds. The EIS should include a description of how roads in the project area impact aquatic resources, provide the current number of road miles and density, and discuss the change in road miles, density, and usage levels that will occur as a result of the project. To the maximum extent practicable, EPA recommends focusing on the use of existing system roads to minimize road construction impacts on previously unimpacted areas.

Debris flows can also be a source of significant sediment. The HCP proposes 35-foot buffers on potential debris flow tracks and high-energy reaches. These buffers extend from the aquatic zone to the potential initiation site. However, it is not clear how the landslide initiation sites are identified. EPA recommends that the EIS include an evaluation of whether steep landslide prone areas of the state forests are appropriately identified as initiation sites. Ensuring adequate buffering to avoid landslide initiation and debris flows is necessary to limit sedimentation and water quality degradation.

Air Quality Impacts
Because projects allowed under the HCP may result in impacts on air quality, EPA recommends that the EIS for the project include:

- A detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS), and criteria pollutant non-attainment areas in the analysis area and vicinity, if applicable.
- Estimation of criteria pollutant emissions for the analysis area and a discussion of the timeframe for release of these emissions from construction through the lifespan of the proposed project. The EIS should specify all emission sources and quantify related emissions.
- Mitigation measures to minimize impacts to air quality from the HCP projects.

Stand Management
EPA recommends that the EIS state how the NMFS will avoid and minimize potential timber harvest impacts such as accelerated erosion, impacts to sensitive resources, and introduction of invasive species. In terms of silvicultural management, EPA recommends the NMFS ensures that proposed activities are consistent with an understanding of natural disturbance and stand development processes and disclose the level of consistency likely to be achieved.

Threatened and Endangered species
In addition to the ITP covered species, EPA recommends that the EIS identify impacts to other endangered, threatened, or candidate species listed under the Endangered Species Act, state sensitive species, and their habitats (including critical habitat) occuring in the analysis area.

Alternatives
Identify a range of alternatives that avoid, minimize, and compensate for impacts to water, air, wildlife, and other resources.

Cumulative Effects
Cumulative effects are those that are reasonably foreseeable, related to the proposed action under consideration, and subject to the agency's jurisdiction and control. EPA recommends that the EIS analysis consider evaluation of impacts over the entire area of impact and consider the effects of projects under the HCP when added to other past, present, and reasonably foreseeable future projects in the analysis area. Considering all the actions in this area together would help decision makers to understand more clearly what the cumulative impacts on environmental resources are likely to be. EPA has issued guidance on how to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents.*[4] The guidance states that to assess the adequacy of the cumulative impact assessment, there are five key areas to consider:

- Resources, if any, that are being cumulatively impacted.
- Appropriate geographic area and the time over which the effects have occurred and will occur.
- All past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern.
- A benchmark or baseline.
- Scientifically defensible threshold levels.

Climate Change Adaptation
EPA recommends that the EIS include a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project, and what impacts the proposed project will have on climate change consequences. These considerations could help inform the development of measures to improve the resilience of the project.

Monitoring and Adaptive Management
EPA recognizes that the HCP has included information on proposed monitoring and adaptive management. EPA recommends that the EIS describe the monitoring program designed to assess implementation of the HCP over time and measure the effectiveness of the HCP in achieving conservation goals. We also recommend that the EIS describe a mechanism to consider and implement additional mitigation measures. In addition, the adaptive management and monitoring plan in the EIS may include the following elements:

- Establish how current analysis in the project area has been or will be done, and how this analysis will inform monitoring priorities.
- Lay out monitoring questions that will be used to inform the adaptive management process.
- Define how success will be measured.
- Provide information to determine whether management direction is being followed, whether desired results are being achieved, and whether underlying assumptions are valid.
- Be as specific as possible about who is the responsible decisionmaker at critical steps of the monitoring plan.

[4] https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf

- Evaluate monitoring strategies periodically to determine if questions and protocols are still relevant and if changes are needed.

Environmental Justice

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.[5] Executive Order 12898, "*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*" (February 16, 1994), directs federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. It further directs agencies to develop a strategy for implementing environmental justice and providing minority and low-income communities access to public information and meaningfully participate in the process. As such, EPA recommends that the NMFS address adverse environmental effects of the proposed project on communities with these concerns and outline measures to mitigate for impacts.

EPA encourages the NMFS to use EPA's EJSCREEN[6] for the EIS to determine the presence of communities with EJ characteristics (e.g. minority and low-income populations). After the NMFS has determined if communities with EJ characteristics exist in the project area, we recommend that the EIS discuss whether these communities would be potentially affected by individual or cumulative actions of the proposed action. EPA also recommends addressing whether any of the alternatives would cause any disproportionate adverse impacts, such as higher exposure to toxins; changes in existing ecological, cultural, economic, or social resources or access; cumulative or multiple adverse exposures from environmental hazards; or community disruption.

If it is determined that communities with EJ characteristics may be disproportionately impacted, describe in the EIS the measures taken by the NMFS to fully analyze the environmental effects of the action on the affected communities and identify potential mitigation measures. Clearly identify a monitoring and adaptive management plan to ensure that mitigation is effective and successful.

Present opportunities for affected communities to provide input into the NEPA process. In the EIS, include information describing what was done to inform these communities about the project and the potential impacts it will have on their communities (notices, mailings, fact sheets, briefings, presentations, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on-scene information), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the project.

Coordination with Tribal Governments

EPA recommends the EIS describe the process and outcome of government-to-government consultation between the NMFS and each of the tribal governments that would be affected by the project, issues that were raised, if any, and how those issues were addressed. See Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments.*[7]

In the EIS, summarize the results of tribal consultation and identify the main concerns expressed by tribes (if any), and how those concerns were addressed. As a resource, we recommend the document

[5] https://www.epa.gov/environmentaljustice/learn-about-environmental-justice
[6] https://ejscreen.epa.gov/mapper/
[7] https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-EO13175tribgovt.pdf

Tribal Consultation: Best Practices in Historic Preservation[8], published by the National Association of Tribal Historic Preservation Officers.

National Historic Preservation Act

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the NRHP. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be disclosed in the EIS. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources, following the regulation at 36 CFR 800.

In the EIS, discuss how the NMFS would avoid or minimize adverse effects on the physical integrity, accessibility, or use of cultural resources or archaeological sites, including traditional cultural properties (TCPs), throughout the project area. Discuss mitigation measures for archaeological sites and TCPs. EPA encourages the NMFS to append any Memoranda of Agreements to the EIS, after redacting specific information about these sites that is sensitive and protected under Section 304 of the NHPA. EPA also recommends providing a summary of all coordination with Tribes and with the State and Tribal Historic Preservation Offices, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

Executive Order 13007, Indian Sacred Sites

Executive Order 13007, "Indian Sacred Sites" (May 24, 1996), requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. It is important to note that a sacred site may not meet the NRHP criteria for a historic property and that a historic property may not meet the criteria for a sacred site. It is also important to note that sacred sites may not be identified solely in consulting with tribes located within geographic proximity of the project. Tribes located outside the direct impact area the plan area may also have religiously significant ties to lands within the plan area and should be included in the consultation process.

In the EIS, address the existence of Indian sacred sites in the project areas, including seeps and springs, that may be considered spiritual sites by regional tribal nations. Discuss how the NMFS would ensure that the proposed action would avoid or mitigate for the impacts to the physical integrity, accessibility, or use of sacred sites.

[8] National Association of Tribal Historic Preservation Officers. May 2005. Tribal Consultation: Best Practices in Historic Preservation. http://www.nathpo.org/PDF/Tribal_Consultation.pdf.